

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

BRANDON JOSEPH CARDENAS,

Plaintiff,

v.

Civ. No. 16-457 JCH/GJF

AARON VIGIL, et al.,

Defendants.

ORDER TO SHOW CAUSE

This matter is before the Court *sua sponte*. Plaintiff Brandon Joseph Cardenas (“Plaintiff”) is an incarcerated prisoner. He filed a Civil Rights Complaint on May 18, 2016. ECF No. 1. Cardenas submitted an application to proceed under § 1915 on May 18, 2016, but did not include the required six-month inmate account statement. ECF No. 2. On May 24, 2016, the Court ordered him to cure the deficiency by submitting his account statement. ECF No. 3. Cardenas then submitted his inmate account statement [ECF No. 4] and the Court granted the application to proceed *in forma pauperis* on December 29, 2016. ECF No. 8. The Court also required Plaintiff Cardenas to make an initial partial payment of \$12.35 or show cause why he should not be required to make the payment within 30 days of entry of the Order. *Id.* at 1.

Cardenas responded to the Order by filing an inmate account statement for a two-month period. ECF No. 9. The inmate account statement shows that Cardenas had an account balance sufficient to pay the initial partial payment, but spent his money on commissary purchases. *Id.* “[W]hen a prisoner has the means to pay an initial partial filing fee and instead spends his money on amenities at the prison canteen or commissary, he should not be excused for failing to pay the initial partial filing fee.” *Baker v. Suthers*, 9 F. App’x 947, 949 (10th Cir. 2001); *see also Shabazz v. Parsons*, 127 F.3d 1246, 1248-49 (10th Cir. 1997).

More than 30 days has elapsed since entry of the Order and Plaintiff has not paid the \$12.35 initial partial payment or shown cause why he should be relieved of the obligation to pay.

When a prisoner is granted leave to proceed *in forma pauperis*, 28 U.S.C. § 1915(b)(1) provides:

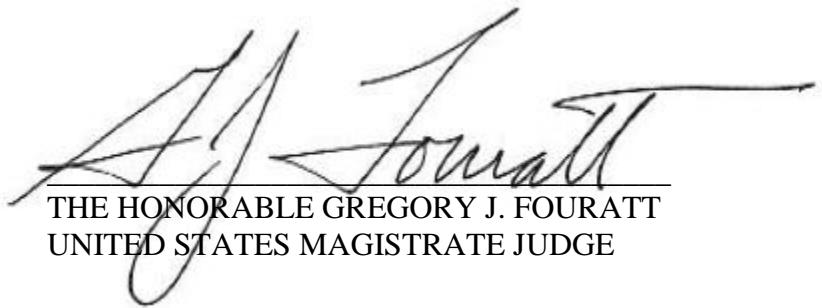
The court **shall** assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal."

(emphasis added). Plaintiff was ordered to make the required partial payment under 28 U.S.C. § 1915(b)(1) or show cause why the payment should be excused, but has failed to comply with the Court's Order. The Court may dismiss an action under Federal Rule of Civil Procedure 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders.

See Olsen v. Mapes, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003).

IT IS THEREFORE ORDERED that Plaintiff show cause, within 30 days of entry of this Order, why this case should not be dismissed for failure to comply with the Court's December 29, 2016, Order.

IT IS SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE